IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2834 of 1992

with

SPECIAL CIVIL APPLICATION No 4615 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GSRTC

Versus

I.M. PATEL

Appearance:

1. Special Civil Application No. 2834 of 1992
   MR HARDIK C RAWAL for Petitioner No. 1
   MR JS BRAHMBHATT for Respondent No. 1
2. Special Civil Application No. 4615 of 1993
   MR JS BRAHMBHATT for Petitioner No. 1
   MR HARDIK C RAWAL for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 17/01/2002

ORAL JUDGEMENT

Heard learned advocate Mr. Hardik C. Raval for the Corporation and Mr. Brahmbhatt, learned advocate for the workman in these two petitions. These are two cross petitions, one filed by the Corporation and the another filed by the workman challenging the same award made by the labour court, Baroda in Reference No. 720 of 1986 dated 16th September, 1991 wherein the labour court has set aside the order of termination dated 12th June, 1984 and has granted reinstatement with continuity of service with 75 per cent of the back wages for the intervening period. Therefore, the petitioner in special civil application no. 2834 of 1992 has challenged the award in so far as it relates to grant of reinstatement in service with 75 per cent of back wages for the intervening period whereas the workman in special civil application no. 4615 of 1993 has challenged the award in so far as it relates to refusal of remaining 25 per cent of the back wages.

The Division Bench of this Court has passed the following order on 22nd September, 1992.

" Rule. Interim relief against the order of reinstatement is refused. As regards the payment of back wages and other benefits are concerned, it is directed that Corporation may retain 50 per cent of the amount with it on the condition that in case the petitioner fails in the petition, the amount retained by it shall be paid to the workman with 15 (fifteen) per cent interest. Balance of 25 per cent of the amount shall be paid to the workman latest by May 30, 1992. In case the balance amount of 25 per cent is not paid to the workman latest by May 30, 1992, it shall carry interest at the rate of 15 (fifteen) per cent per annum from the date of this order till the amount is paid."

Thus, while admitting this petition, the division bench of this court has stayed payment of 50 per cent of the back wages and has directed to make payment of 25 per cent of back wages for the intervening period.

The facts of the present case can be stated in short as under:

The workman was working as conductor in the

corporation. The allegation against the workman was to the effect that he remained absent on the ground of sickness for the period from 8th February, 1984 to 16th February, 1984 and, thereafter, on 20th February, 1984 for a further period upto 15 days. Thereafter, remained absent for fifteen days from 6th March, 1984 and total period of remaining absent from 8th February, 1984 to 16th February, 1984 and 20th February, 1984 for which departmental inquiry was initiated against the workman and thereafter he was dismissed from service on 12th June, 1984. Said order of dismissal was challenged in Reference No. 720 of 1986.

Before the labour court, legality, validity and propriety of the departmental inquiry was not challenged by the respondent workman but the workman has reserved his right to challenge the findings recorded by the inquiry officer. Purshis to that effect was filed by the workman before the labour court at Exh. 14. Before the labour court, either side has not led any oral evidence. The labour court, after considering the entire evidence on record, the labour court has come to the conclusion that the findings recorded by the Inquiry Officer are perverse and baseless and has also come to the conclusion that the workman has remained absent without obtaining prior permission for a period from 20th February, 1984 to 6th March,1984. These facts have been established from the record but the corporation has not been able to justify why his application for leave has been rejected. The labour court has recorded clear finding to the effect that the workman has remained absent without prior permission from 20.2.1984 to 6.3.1984 and, therefore, the labour court, after recording such finding and considering the past record of the workman wherein, earlier, such similar two misconducts were committed by the workman, considering such past record, the labour court has recorded the conclusion that in view of these facts, looking to the gravity of the misconduct of remaining absent without prior permission, punishment of dismissal from service is disproportionate and, therefore, while exercising the powers under section 11-A of the Industrial Disputes Act, 1947, the labour court set aside the order of punishment of dismissal. Thereafter, the labour court has examined the aspect of back wages. The labour court has presumed certain things without any basis and there was no oral evidence of the workman before the labour court to the effect that during the entire period, he remained unemployed and in such a situation, there was no liability of the employer corporation to prove the gainful employment of the workman. However, in absence of any evidence to the

effect that the workman had remained without job during the intervening period, the labour court has passed the award as regards back wages only with a view to reduce the gravity of unemployment and on such premise, back wages to the extent of 75 % were granted in favour of the workman and remaining 25 % of the back wages were denied by way of penalty. Therefore, these two petitions, one by the corporation challenging the award of reinstatement with 75 % of back wages for the intervening period and the another by the workman wherein he has challenged the award in so far as it relates to refusal of back wages of 25%.

I have heard the learned advocates for the parties at length. I have considered the submissions made by them. According to my opinion, the labour court has granted the back wages in absence of any evidence. There was no any evidence of the workman concerned that he has remained unemployed during the intervening period. However, instead of appreciating this aspect of the matter, the labour court thought it fit that looking to the gravity of misconduct, order of punishment is disproportionate and, therefore, the labour court set aside the order of dismissal but at the time of passing orders as regards back wages, the labour court ought to have taken into account the oral evidence of the workman and ought to have appreciated that it is not his say that he has remained out of unemployed during the intervening period. In view of these facts, considering the gravity of misconduct, length of service at the relevant point of time and also considering the fact that the workman has submitted leave report on the ground of sickness for some period and for the period from 20.2.1984 to 6.3.1984, no such report was submitted by the workman, and also considering the order passed by the Division Bench of this Court at the time of admitting this petition, according to my opinion, the view taken by the Division Bench while admitting the petition filed by the Corporation in ordering to withheld 50% of the back wages and granting 25% of the back wages to the workman is quite proper and reasonable order passed by the Division Bench of this Court and the same is most equitable order. Therefore, according to my opinion, the impugned award passed by the labour court is required to be modified in so far as it relates to back wages. It has been submitted by Mr. Raval that as per the order passed by the Division Bench of this court at the time of admitting the petition, amount of 25% of the back wages has already been paid to the workman and the workman has also been reinstated in service. However, learned advocate Mr. Brahmbhatt appearing for the workman in these two

petitions has submitted that the workman has not been reinstated in service immediately after publication of the award and, therefore, according to him, the workman is entitled for full wages from the date of the award till the date of his actual reinstatement in service.

Therefore, considering the submissions made by the learned advocates for the parties and perusing the award made by the labour court, according to my opinion, the award is required to be modified in respect of back wages part that instead of 75% back wages, the workman is entitled to 25% back wages during the intervening period. To that extent, the award is required to be modified. Therefore, the corporation is required to implement the award of reinstatement of the workman with continuity of service with 25 per cent of the back wages. Rest of the directions issued by the labour court as regards back wages are hereby set aside. It is further directed to the corporation to pay full wages to the workman concerned from the date of the award till the date of his actual reinstatement if the workman has not been reinstated immediately after publication of the award. Such amount of full wages from the date of the award till the date of actual reinstatement of the reinstatement is directed to be paid within two months from the date of receipt of copy of this order. The award made by the labour court in reference No. 720 of 1986 dated 16th September, 1991 is modified to the extent as aforesaid. Accordingly, special civil application no. 2834 of 1992 is partly allowed. Rule is made absolute in the said petition to the extent indicated hereinabove with no order as to costs.

In view of the order passed in special civil application no. 2834 of 1992, special civil application no. 4615 of 1993 is dismissed. Rule issued in the said petition is discharged with no order as to costs.

Dt. 17.1.2002. (H.K.Rathod,J.)
Vyas